

**TESTIMONY OF PRESIDENT GERI SMALL
OF THE NORTHERN CHEYENNE TRIBE
ON S. 2212**

**BEFORE THE UNITED STATES SENATE COMMITTEE
ON INDIAN AFFAIRS**

JULY 30, 2002

Chairman Inouye, Vice-Chairman Campbell and Committee members, thank you for inviting me here today to testify on Senate Bill 2212. I am honored to appear before you today to testify on this very important legislation on trust reform. I am especially proud to be testifying before the honorable Ben Nighthorse Campbell, the Tribe's most esteemed member.

Besides serving as President of the Northern Cheyenne Tribe, I also serve as Chair of the Montana/Wyoming Tribal leaders and as a delegate on the Trust Reform Task Force. Today, I am speaking to you today as the President of the Northern Cheyenne Tribe as I have not had time to consult with all the tribes from my region and get a consensus on my testimony.

As you know, S. 2212 was introduced on April 18, 2002 by Senators McCain, Daschle and Johnson at the urging of Tribes from the Great Plains Region. I was at a joint meeting of the Great Plains and Rocky Mountain Region tribes on April 17, 2002 when I learned of the legislation. The Great Plains and Rocky Mountain tribes discussed the legislation at length that day and worked feverishly to submit a preliminary response generally supporting the legislation.

I understand that the introduction of S. 2212 was not popular with the Department of Interior, some Senators sitting on this Committee and some tribal leaders. However, the introduction of legislation was needed to impress upon Interior that legislation is absolutely necessary to resolve trust management problems. I believe that S. 2212 has served this objective effectively and that it has provoked lively discussion concerning trust reform legislation. Accordingly, I thank Senators McCain, Daschle and Johnson for sponsoring S. 2212.

There are some issues that ascend above party lines and personal agendas. Trust reform is such an issue. It is time to roll up our sleeves and develop administrative and legislative solutions to resolve the long history of mismanagement of Indian trust assets. With respect to the administrative solution, I have attended every Task Force meeting and I am impressed by the commitment of the tribal leaders and Interior officials on the Task Force. I believe the Task Force is close to creating a new organizational structure that will improve the management of trust assets by the Bureau of Indian Affairs. Consequently, I believe it is time for this Committee to start working closely with the Task Force to develop trust reform legislation.

Tribal leaders have advanced certain themes at the Task Force meetings that I believe must be supported by trust reform legislation. These themes are:

1. The creation of an independent regulatory commission that will oversee trust fund management, including the sale and lease of trust resources.
2. The creation of a new position, either a Deputy Secretary or an Under Secretary that reports directly to the Secretary, that will, among other things, coordinate trust reform efforts of all affected agencies.
3. The development of trust standards to guide the BIA in managing trust accounts and resources.
4. The concentration of resources at the local agency level.
5. Legislation that addresses the problem of land fractionation.
6. Deference to Tribal laws regulating trust resources.
7. The continuation of the Task Force or a task force to work out the details of the implementation the new organizational structure and trust reform legislation.
8. Direct oversight of BLM, BOR and MMS trust management.
9. Trust reform should not restrict a tribe's ability to compact.
10. Most importantly, adequate funding.

I will address each of these themes and how S. 2212 deals with them.

1. **The creation of an independent regulatory commission that will oversee trust fund management, including the sale and lease of trust management.**

I believe that trust principles require that an independent regulatory commission be created to oversee the management of trust funds, including the sale and lease of trust resources. Congress needs to create a check and balance to ensure proper trust management. Tribes and Indian individuals should not have to run to federal court every time they suspect that their accounts have been mismanaged. Rather, an independent regulatory commission should be created to establish trust fund management regulations, investigate allegations of mismanagement, enforce violations, and conduct audits.

S. 2212 creates an Office of Trust Fund Reform Implementation and Oversight that is not independent of Interior nor regulatory in nature. Creation of this Office just creates more bureaucracy. An independent regulatory commission that could oversee and enforce trust management is a better alternative in my view.

2. The creation of a new position, either a Deputy Secretary or an Under Secretary that reports directly to the Secretary, that will, among other things, coordinate trust reform efforts of all affected agencies.

S. 2212 creates a Deputy Secretary position that will coordinate trust reform efforts throughout Interior and report directly to the Secretary. I believe that tribe's would prefer a Deputy Secretary as opposed to an Under Secretary. However, tribes will settle for an Under Secretary as long as the Under Secretary reported directly to the Secretary of Interior.

3. The development of trust standards to guide the BIA in managing trust accounts and resources.

S. 2212 is silent on trust standards. However, if the jurisdiction of the Independent Commission and trust officers are limited to trust fund management and the sale and lease of trust resources, the standard for management should be the highest fiduciary standard realized by normal banking standards. This standard should be confirmed in trust reform legislation.

The standard for the management of trust resources is a more difficult question and should be developed. If this standard is not developed in the trust reform legislation - it should be developed in separate legislation in the near future.

4. The concentration of resources at the local agency level.

S. 2212 does not directly address this issue and I am not certain how this issue can be addressed legislatively. However, I know that trust funds and resources cannot be managed from afar. Human resources must be available at the local agency level in order to properly manage trust funds and resources.

5. Legislation that addresses the problem of land fractionation.

S. 2212 does not address the enormous problem of land fractionation. I understand that the separate legislation is pending concerning land fractionation. It is imperative that the fractionation problems be resolved legislatively in order to make land and resource management more manageable.

6. Deference to Tribal laws regulating trust resources.

S. 2212 does not address this theme directly. However, Rocky Mountain and Great Plains tribes have identified situations where the implementation of the highest trust standards on trust resources could infringe on Tribal regulations. For instance, the Northern Cheyenne Tribe has set grazing rates on the Northern Cheyenne Reservation. The Great Plains and Rocky Mountain Region tribes are concerned that the highest trust standards could require the BIA to obtain the highest price for the resource. This would conflict with the Tribe's decision to subsidize Tribal cattle operators.

Also, from an enforcement standpoint, a trust officer operating under the highest trust standards may remove an operator from a tribal range unit he believes is being over grazed. The Tribe may not agree with the trust officers' assessment or believe that the trust standard is a lesser standard. In other words, the tribes would like to reserve these decisions for themselves and avoid interference from a trust officer. Trust reform should not interfere with the Tribe's right to regulate trust resources.

7. The continuation of a task force to work out the details of the implementation of the new organizational structure and trust reform legislation.

S. 2212 creates an advisory board to provide advice on all matters within the jurisdiction of the Office of Trust Reform. The purpose of the Task Force after a proposal is adopted is twofold. The first reason is to work out the details of the new trust reform organization and regulations for the trust reform legislation. The second would be to work with the independent regulatory commission on trust fund management regulations.

8. Direct oversight of BLM, BOR and MMS.

S. 2212 provides that the Office of Trust Reform would supervise the Director of BLM and MMS to the extent that they administer any Indian trust assets or funds. This is consistent with what Tribes would like except oversight responsibility would rest with the Deputy Secretary or Under Secretary, whichever position is created, instead of the Office of Trust Reform.. Tribes would also like to have BOR included in the oversight to the extent that it administers Indian trust assets.

9. Trust Reform should not restrict a tribe's ability to compact.

Self-governance tribes are concerned that trust reform legislation will negatively impact their compacts with the federal government. S. 2212 supports a tribe's ability to directly

manage trust funds or assets themselves through self governance laws. Any legislation adopted by Congress should provide this same support.

10. Adequate funding.

Trust Reform legislation and the efforts of the Task Force will prove futile unless Congress commits to adequately funding the BIA. In each Task Force session, I would hear a Tribal leader state that resolution of this problem really comes down to adequate funding. I agree with this assessment. Funding is needed to employ additional quality people, properly train all employees, and to purchase the necessary equipment. S. 2212 does not address this issue as it is an appropriations matter. I raise it today to stress this point. Congress must realize that mismanagement cost Congress money. We would all be better off paying what is necessary to manage properly than to pay for the mistakes later.

This concludes my testimony. Thank you for your patience and for allowing me to testify today.